

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ROGER R. CRANE, JR,

Plaintiff,

- vs -

POETIC PRODUCTS LIMITED,

Defendant.

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POETIC PRODUCTS LIMITED,

Counterclaimant,

- vs -

ROGER R. CRANE, JR,

Counterclaim Defendant.

**Case No. 07 Civ. 7063 (BSJ) (FM)**

**ANSWER TO COUNTERCLAIM**

**ANSWER TO DEFENDANT'S COUNTERCLAIM**

Plaintiff-Counterclaim Defendant Roger R. Crane Jr. ("Crane") by and through his attorneys, Nixon Peabody LLP, as and for its Answer to the Defendant's Counterclaim, state, upon information and belief, as follows:

1. Admits.
2. Admits.
3. Admits but avers that Defendant's "state law claims" are preempted by the Copyright Act.
4. Admits venue and otherwise denies the remaining allegations.
5. Admits.

6. Admits.
7. Admits that Crane's *The Last Confession* was advertised, marketed, promoted, published, and performed in the U.K. Crane otherwise denies the remaining allegations.
8. Admits that Defendant notified Crane of alleged infringement. Otherwise denies the remaining allegations.
9. Admits.
10. Admits that the cited articles were published. Otherwise denies the remaining allegations.
11. Admits that *The Last Confession* was authored and published in the U.S. and that Crane has marketed the same in the U.S. Otherwise denies the remaining allegations.
12. Denies.

#### **COUNT I**

13. Crane hereby repeats and asserts its responses to paragraphs 1 through 12 as if fully set forth herein.
14. Admits.
15. Denies.
16. Denies.
17. Denies.
18. Denies.
19. Denies.

**COUNT II**

- 20. Crane hereby repeats and asserts its responses to paragraphs 1 through 19 as if fully set forth herein.
- 21. Denies.
- 22. Denies.
- 23. Denies.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

The Counterclaim fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

The work that Defendant claims has been infringed is not entitled to copyright protection on the ground that it is within the public domain and/or it does not constitute copyrightable subject matter.

**THIRD AFFIRMATIVE DEFENSE**

Defendant's request for relief is barred by the doctrines of fair use and scenes a faire.

**FOURTH AFFIRMATIVE DEFENSE**

Defendant's request for relief is barred by the doctrines of waiver and estoppel.

**FIFTH AFFIRMATIVE DEFENSE**

The Second Count asserted by Defendant for common law unfair competition or any other state law claims are preempted by the Copyright Act, 17 U.S.C. § 101.

**SIXTH AFFIRMATIVE DEFENSE**

Any alleged similarities between Crane's and Defendant's works are not protectible as they are in the public domain, historical fact, and/or completely lacking in originality.

**SEVENTH AFFIRMATIVE DEFENSE**

Crane's allegedly infringing work was created independently from Defendant's work.

WHEREFORE, Crane prays for judgment in its favor and against Defendant, as follows:

- (a) A declaration that Crane's *The Last Confession* does not infringe any purported rights of Defendant under U.S. and U.K. copyright law;
- (b) Reasonable attorneys' fees and costs pursuant to 17 U.S.C. § 505 and as may otherwise be allowed by law; and
- (c) Such other relief as is determined to be just and proper.

Dated: New York, New York  
November 13, 2007

NIXON PEABODY LLP

/s/ Frank Penski  
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